

UNITED STATES DEPARTMENT OF TRANSPORTATION
FEDERAL AVIATION ADMINISTRATION
WASHINGTON, DC

In the Matter of: JOCELYNE PIERRE
FAA Order No. 2001-8

Docket No. CP99EA0057
DMS No. FAA-1999-6531¹

Served: May 16, 2001

ORDER DENYING APPEAL²

Respondent Jocelyne Pierre filed a letter dated December 29, 2000, indicating that she wished to appeal from a written order assessing a \$4,000 civil penalty against her issued by Administrative Law Judge Burton S. Kolko.³ However, Ms. Pierre has not submitted any information or argument justifying a reversal of the law judge's order. Hence, Ms. Pierre's appeal is denied, and the law judge's order is affirmed.

¹ Materials filed in the FAA Hearing Docket (except for materials filed in security cases) are also available for viewing through the Department of Transportation's Docket Management System (DMS). Access may be obtained through the following Internet address: <http://dms.dot.gov>.

² The Administrator's civil penalty decisions are available on LEXIS, WestLaw, and other computer databases. They are also available on CD-ROM through Aeroflight Publications. Finally, they can be found in Hawkins's Civil Penalty Cases Digest Service and Clark Boardman Callaghan's Federal Aviation Decisions. For additional information, see 66 Fed. Reg. 7532, 7549 (January 23, 2001).

³ Under 14 C.F.R. §§ 13.233(c) and 13.211(e), Ms. Pierre was required to perfect her appeal by filing an appeal brief within 55 days of the issuance of the order assessing civil penalty. Thus, Ms. Pierre's appeal brief was no later than February 7, 2001. Ms. Pierre has not perfected her appeal by filing a separate appeal brief.

The Administrator has held that when a notice of appeal contains sufficient detail, it may meet the requirements for an appeal brief. In the Matter of McDermott, FAA Order No. 99-8 at 2 (August 31, 1999). Ms. Pierre's one-page notice of appeal is sufficiently detailed to be construed as an appeal brief.

On October 27, 1999, Complainant, by its agency attorney, filed the complaint, alleging that Ms. Pierre had knowingly offered North Star Airlines four fiberboard boxes for transportation by air to Port au Prince, Haiti. Complainant alleged that approximately 1200 one-ounce tubes of artificial nail adhesive were packed in one of the boxes. It was alleged that this artificial nail adhesive contained a flammable liquid and was classified as a hazardous material under the Department of Transportation Hazardous Materials Regulations (HMR), 49 C.F.R. 172.101 *et seq.* It was alleged further that Ms. Pierre did not comply with the requirements of the HMR regarding proper shipping papers, marking, labeling, and packing of this hazardous material.⁴ Complainant proposed a \$4,000 civil penalty.

Under the Rules of Practice in FAA Civil Penalty Actions, Ms. Pierre was required to file a written answer not later than 30 days after service of the complaint.⁵ The complaint contained a reminder in bold type about this requirement as follows: **"The Rules of Practice provide that Respondent must file a written answer to this Complaint, or a written Motion to Dismiss if appropriate, not later than 30 days**

⁴ The agency attorney alleged in the complaint that Ms. Pierre violated the following regulations: 49 C.F.R. § 171.2(a), 172.200(a), 172.202(a)(1), 172.202(a)(2), 172.203(a)(3), 172.202(a)(4), 172.202(a)(5), 172.204(a), 172.204(c)(1), 172.204(c)(2), 172.204(c)(3), 172.300(a), 172.301(a), 172.400(a), 172.600(c), 173.1(b), 173.22(a)(1) & (2), and 173.24(b).

⁵ Section 13.209(a) of the Rules of Practice in Civil Penalty Actions provides:

A respondent shall file a written answer to the complaint, or may file a written motion pursuant to § 13.208(d) or § 13.218(f)(4) of this subpart instead of filing an answer, not later than 30 days after service of the complaint. The answer may be in the form of a letter but must be dated and signed by the person responding to the complaint. An answer may be typewritten or may be legibly handwritten.

14 C.F.R. § 13.209(a). An answer must contain a statement of any affirmative defenses that the respondent intends to assert at the hearing. 14 C.F.R. § 13.209(d). The person filing the answer must also admit, deny, or explain that she lacks sufficient knowledge to admit or deny, each numbered paragraph of the complaint. 14 C.F.R. § 13.209(e).

after the date shown on the Certificate of Service.” Complaint, at 11. Ms. Pierre, however, did not file an answer.

Subsequently, in his order scheduling the hearing for June 7, 2000, the law judge directed Ms. Pierre to file a document by March 15, 2000, in which she admitted or denied each paragraph of the FAA’s complaint. The law judge explained that if an answer was not filed, he would cancel the hearing and assess a \$4,000 civil penalty.

Complainant filed a motion for decision, arguing that the law judge should deem the allegations in the complaint as admitted and should cancel the hearing because Ms. Pierre had not filed an answer and no genuine issues of material fact remained.⁶ Ms. Pierre did not reply to the motion. On May 12, 2000, the law judge issued an order limiting the hearing to the issue of sanction. The law judge noted that he had given Ms. Pierre an oral extension of time until April 15, 2000, in which to file the answer, but none had been received.⁷

Ms. Pierre sent a letter written in French, dated May 3, 2000, to agency counsel requesting a postponement of the hearing. She indicated in the letter that she would be unable to attend the June 7th hearing due to visa problems.⁸ The law judge postponed the

⁶ Agency’s Motion for Decision dated April 17, 2000. Complainant noted that Ms. Pierre had admitted in a letter dated October 22, 1999, that she had attempted to transport artificial nail adhesive by air although she denied knowing that the nail adhesive was flammable. As a result, the agency attorney argued, Ms. Pierre had “knowingly” transported a hazardous material. Complainant explained that the term “knowingly” in the Federal hazardous materials statute pertains to whether a person knew what she did or did not do, rather than whether she knew whether a material is classified as hazardous or that her acts were in violation of the HMR.

⁷ The law judge wrote: “An oral extension was given until April 15, 2000, to file an answer to the complaint, upon inquiry from a representative in New York from the Haitian mission/consulate on behalf of Respondent, who was stated to have limited English and limited understanding of this proceeding.” Order Limiting Hearing dated May 12, 2000.

⁸ The agency attorney forwarded Ms. Pierre’s letter to the law judge.

hearing⁹ but later rescheduled it (along with other hearings to be held in New York), for February 5-16, 2001.¹⁰ Pertaining to the filing of answers, the law judge wrote in this scheduling order:

Those respondents... who have not filed an answer to the FAA's complaint, something that is required in addition to the request for a hearing, must do so within two weeks of this order or there will be no hearing and an order assessing civil penalty will issue. Each paragraph in the agency's complaint must be admitted or denied in a document that is sent to each address on the Service List on the reverse side of this page. **Again, absent an answer, a default judgment will occur and there will be no hearing.** Respondents who do not understand this or who have questions may call the number for the judge's law clerk, listed at the bottom of the Service List.

Scheduling Order dated September 18, 2000. (Emphasis in the original). Ms. Pierre did not comply with the scheduling order by filing an answer.

On December 14, 2000, the law judge issued an order assessing a \$4,000 civil penalty. The law judge wrote, regarding Ms. Pierre's failure to file an answer or a reply to Complainant's motion for decision:

I construe Respondent's silence both as a constructive withdrawal of the request for a hearing and as an admission of the complaint's allegations. Either conclusion renders the holding of a hearing unnecessary. Accordingly, this order is an order assessing a civil penalty of \$4,000, which is due and payable forthwith.

Order Assessing Civil Penalty dated December 14, 2000.

Ms. Pierre, by letter, has appealed from the law judge's order. In her letter, she stated the following:

- she speaks French, but little English, and as a result, she had someone translate the order assessing civil penalty and help her write her letter;
- she is an elementary school teacher living in Haiti;

⁹ Order Postponing Hearing served on May 15, 2000.

¹⁰ Scheduling Order dated September 18, 2000.

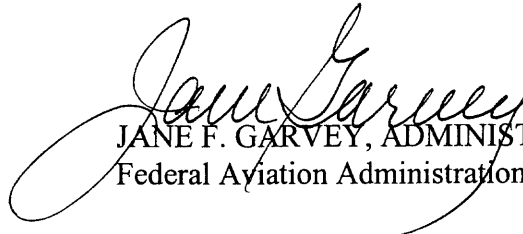
- during a trip to the United States in 1999, she bought nail products;
- she was unaware "of any restrictions or interdictions on nail products;"
- she was unable to obtain the necessary authorizations for travel so that she could attend the scheduled hearings;
- she tried twice, unsuccessfully, to meet with the agency attorney at Kennedy Airport;
- she cannot afford the \$4,000 civil penalty, which is the equivalent of "some Haitian \$19,000.00 while my annual salary is only Haitian \$7,200.00 for me and my two daughters (US \$1,400 equivalent)."

Ms. Pierre explained that she needed to be in the classroom in Haiti most of the year, so that if an "appeal" could not be heard in a timely fashion then she wanted to negotiate a smaller fine to be paid in installments based upon her limited financial means.

The issue on appeal was whether the law judge properly cancelled the hearing based upon Ms. Pierre's failure to file an answer to the complaint. Under 14 C.F.R. § 13.209(f), "A person's failure to file an answer without good cause shall be deemed an admission of the truth of each allegation contained in the complaint." Ms. Pierre has presented no reason why she did not file an answer. The law judge advised her several times to file an answer, and the agency attorney had provided information regarding the requirement to file an answer. In light of Ms. Pierre's failure to demonstrate good cause for not filing an answer, the Administrator has no reason to reverse the law judge's decision construing her failure to file an answer as a constructive withdrawal of the request for hearing and as an admission of the allegations set forth in the complaint.¹¹

¹¹ The issue of the appropriateness of the civil penalty is not before the Administrator in this appeal. However, the agency attorney is encouraged to look into Ms. Pierre's financial means

THEREFORE, Ms. Pierre's appeal is denied, and the law judge's order assessing civil penalty is affirmed.¹²


JANE F. GARVEY, ADMINISTRATOR
Federal Aviation Administration

Issued this 15th day of May, 2001.

and, if appropriate, to negotiate a lower civil penalty or to establish an installment plan for her payments. See 14 C.F.R. §§ 13.16(l) and (l)(2).

¹² Unless Respondent files a petition for review with a Court of Appeals of the United States under 49 U.S.C. § 46110 within 60 days of service of this decision, this decision shall be considered an order assessing civil penalty. See 14 C.F.R. §§ 13.16(b)(4) and 13.233(j)(2)(2000.)